

Federal Register

Thursday
February 25, 1988

Part VI

Environmental Protection Agency

40 CFR Part 355

**Extremely Hazardous Substances List;
Final Rules**

waste since 1980, Monroe was under a duty to treat that waste as hazardous and to subject the Sandhills site to Subtitle C controls since 1980. Because Monroe was required to treat its Sandhills' wastes as hazardous prior to the effective date of the final decision, and because the final decision denied the petition to exclude the Sandhills' waste from the lists of hazardous wastes, the Sandhills site was, is, and will continue to be subject to Subtitle C controls. EPA is therefore clarifying that the six-month effective date will have no effect on Monroe's preexisting and continuing Subtitle C obligations at the Sandhills site.

Date: February 18, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following correction is made to SW-FRL-3110-4, the Hazardous Waste Management System: Identification and Listing of Hazardous Waste final rule published in the *Federal Register* on November 14, 1986 (51 FR 41320). The paragraph entitled "Final Agency Decision" should be corrected to read:

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Monroe is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Monroe Auto Equipment Company for its wastewater treatment sludge [and for its vacuum filter cake] as generated, and as contained in its on-site surface impoundments [and off-site Sandhills landfill disposal site] resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Cozad, Nebraska. By this action, the Agency also withdraws the temporary exclusion granted in December 1982, for the waste in the on-site surface impoundments.

[FR Doc. 88-4029 Filed 2-24-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 355

[FRL-3333-6]

Extremely Hazardous Substances List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 17, 1986, the U.S. Environmental Protection Agency (EPA) proposed the deletion of 40 substances from the list of "extremely

hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986. Title III of the Superfund Amendments and Reauthorization Act of 1986. Today EPA is taking final action to remove 36 of these substances from the list of extremely hazardous substances.

EFFECTIVE DATE: This rule becomes effective on February 25, 1988.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. EPA, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is 202-382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Bishop, Preparedness Staff, WH-562A, or Carrie Wehling, Office of General Counsel, LE-132S, U.S. EPA, 401 M Street SW., Washington, DC 20460. The Chemical Emergency Preparedness Hotline can also be contacted for further information at 1-800-535-0202, in Washington, DC at 1-202-479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Statutory Authority
- II. Background
- III. Today's Rulemaking
- IV. Regulatory Analyses

I. Statutory Authority

This regulation is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 ("the Act").

II. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (1986). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050.

Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" is excess of its

threshold planning quantity ("TPQ") must notify its State emergency planning commission and participate, as necessary, in local emergency planning activities.

Section 302 directed EPA to publish the list of extremely hazardous substances as an interim final rule within 30 days of the enactment of SARA. Section 302(a)(2) required that this list be identical to the list compiled by EPA in 1985 as part of the Agency's Chemical Emergency Preparedness Program. Under section 302(a)(4), EPA is authorized to revise the list, but in undertaking any such revision, the Agency must take into account the "toxicity, reactivity, volatility, dispersability, combustibility, or flammability of a substance". The term "toxicity" is defined to include "any short- or long-term health effect which may result from a short-term exposure to the substance".

EPA published the list of 402 extremely hazardous substances and threshold planning quantities on November 17, 1986, 51 F.R. 41570. On the same day, EPA proposed the deletion of 40 substances from the list of extremely hazardous substances based on the fact that they did not meet the Agency's criteria for acute toxicity, 51 F.R. 41593.

On April 22, 1987, EPA published a revision of the interim final rule, 52 FR 13378. In the preamble to that rule, EPA announced that it was deferring the proposed delisting of these substances, pending an evaluation of the long-term effects from short-term exposure to each of the substances proposed for delisting, 52 F.R. 13388. This deferral was in response to comments from members of the public who argued that the proposed deletion would be premature and inconsistent with the statutory requirements for revision to the list which require consideration of both short-term and long-term health effects from short-term exposure prior to deletion.

III. Today's Rulemaking

Today EPA is taking final action to remove 36 of the 40 substances proposed for delisting on November 17, 1986 from the list of extremely hazardous substances under section 302 of the Act. Although EPA has not considered the long-term toxicity of these substances, EPA believes that today's rule is necessary in light of the recent opinion of the District Court for the District of Columbia in several cases challenging EPA's deferral of the delisting.

On November 23, 1987, the District Court in *A.L. Laboratories, Inc. v. Environmental Protection Agency*, Civil

Action No. 87-1991-OG (and consolidated cases) issued an order requiring EPA to remove four of the substances proposed for delisting from the list of extremely hazardous substances under section 302 of the Act. The basis for the Court's order was its reasoning that Congress did not intend to include in the statutorily-designated list substances listed due to "clerical error".

In response to the Court's order, EPA has published final rules removing those four substances from the section 302 list. 52 FR 48072, 48073 (December 17, 1987). These substances are bacitracin, dibutyl phthalate, dimethyl phthalate, and dioctyl phthalate. Although the Court's order does not expressly address the remaining 36 substances proposed for deletion, EPA believes that the Court's reasoning extends to these substances as well. EPA's November 17, 1986 proposed delisting of all 40 substances was based on the Agency's explicit recognition that these substances did not meet the criteria established by the Agency for qualification for the list referred to by Congress in section 302(a)(2). The Court concluded that such substances were thus listed under section 302 in error and that the criteria for revisions for the list under section 302(a)(4) were inapplicable to such substances. Thus, contrary to the arguments presented by the commenters on the November 17, 1986 proposed delisting, under the Court's reasoning, EPA is not required, and in fact is not authorized, to consider long-term toxicity prior to removing any of these 40 substances from the list.

Accordingly, upon the effective date of today's rule, the remaining 36 substances proposed for delisting on November 17, 1986, will no longer be subject to the emergency planning and notification requirements under the Act. EPA is currently developing the criteria for evaluating the additional physical and health characteristics specified under section 302(a)(4) for future revisions of the extremely hazardous substances list. If any of these substances meet these criteria in the future, EPA will consider such substances for relisting at that time. Because any such future revisions will be based upon the Agency's findings concerning the toxicity or other health or physical hazards of such substances, the criteria specified in section 302(a)(4) will be fully applicable to such revisions.

With today's delisting, there are 366 substances remaining on the list of "extremely hazardous substances" under section 302 of the Act.

IV. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of \$100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: February 18, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the Preamble, Part 35 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 continues to read as follows:

Authority: Secs. 302, 303, 304, 325, 326, 328, and 329 Pub. L. 99-499, 100 Stat. 1613, 42 U.S.C. 11002, 11003, 11004, 11025, 11026, 11028, and 11029 (1986).

PART 355—[AMENDED]

2. Appendix A to Part 355 is amended by removing the following entries:

Appendix A—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[Alphabetical order]

CAS No.	Chemical name
16919-58-7	Ammonium chloroplatinate.
98-09-9	Benzeneisothionyl chloride.
106-99-0	Butadiene.
109-19-3	Butyl isovalerate.
111-34-2	Butyl vinyl ether.
2244-16-8	Carvone.
107-20-0	Chloroacetaldehyde.
7440-48-4	Cobalt.
117-52-2	Coumataryl.
287-92-3	Cyclopentane.
633-03-4	C.I. basic green 1.
8023-53-8	Dichlorobenzalkonium chloride.
93-05-0	Diethyl-p-phenylenediamine.
646-06-0	Dioxolane.
2235-25-8	Ethylmercuric phosphate.
1335-87-1	Hexachloronaphthalene.
53-86-1	Indomethacin.
10025-97-5	Iridium tetrachloride.
108-87-8	Mesitylene.
7440-02-2	Nickel.
65-86-1	Orotic acid.
20816-12-0	Osmium tetroxide.
76-01-7	Pentachloroethane.
87-86-5	Pentachlorophenol.
84-80-0	Phylloquinone.
10025-65-7	Platinous chloride.
13454-96-1	Platinum tetrachloride.
1331-17-6	Propylene glycol, allyl ether.
95-63-6	Pseudocumene.
10049-07-7	Rhodium trichloride.
128-56-3	Sodium anthraquinone-1-sulfonate.
1314-32-5	Thallic oxide.
21564-17-0	Thiocyanic acid, 2-(benzothiazoylthio)methyl ester.
640-15-3	Thiometon.
52-68-6	Trichlorophenol.
3048-64-4	Vinylnorbornene.

3. Appendix B to Part 355 is amended by removing the following entries:

Appendix B—the List of Extremely Hazardous Substances and Their Threshold Planning Quantities.

[CAS Number Order]

CAS No.	Chemical name
52-68-6	Trichlorophenol.
53-86-1	Indomethacin.

CAS No.	Chemical name
65-26-1	Oxalic Acid
76-01-7	Pentachloroethane.
84-20-0	Phylloquinone.
87-36-5	Pentachlorophenol.
93-05-0	Diethyl-p-phenylenediamine.
95-63-2	Pseudocumene
98-09-9	Benzene-sulfonyl chloride.
106-59-0	Eutadiene
107-20-3	Chloroacetaldehyde
108-67-8	Mesitylene.
109-19-3	Butyl isovalerate
111-34-2	Butyl vinyl ether
117-52-2	Coumataryl
128-56-3	Sodium anthraquinone-1-sulfonate.
257-92-3	Cyclopentane
633-03-4	CI basic green 1.
640-15-3	Thiometon.
646-06-0	Dioxolane.
1314-32-5	Thallic oxide.
1331-17-5	Propylene glycol, allyl ether.
1335-87-1	Hexachloronaphthalene.
2235-25-8	Ethylmercuric phosphate.
2244-16-8	Carvone.
3048-64-4	Vinylbornene.
7440-02-2	Nickel
7440-48-4	Cobalt.
8023-53-8	Dichlorobenzalkonium chloride.
10025-65-7	Platinous chloride.
10025-97-5	Iridium tetrachloride.
10049-07-7	Rhodium trichloride
13454-96-1	Platinum tetrachloride.
16919-58-7	Ammonium chloroplatinate.
20816-12-0	Osmium tetroxide.
21564-17-0	Thiocyanic acid, 2-(benzothiazolylthio)methyl ester

[FR Doc. 88-4030 Filed 2-24-88; 8:45 am]

BILLING CODE 5560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable to Pay

Correction

In the rule document 87-27318 beginning on page 46022 in the issue of Thursday, December 3, 1987, make the following correction:

§ 124.511 [Corrected]

On page 46036, in the third column, ninth line from the bottom of the page, in § 124.511(b)(1)(iii)(B), the word "compliance" should be "noncompliance".

Dated: February 18, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88-4047 Filed 2-24-88; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-416; RM-5112]

Radio Broadcasting Services; Keokuk, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of W. Russell Withers, Jr., substitutes Channel 290C2 for Channel 237A at Keokuk, Iowa, and modifies its license for Station KOKX(FM) to specify the higher powered channel. Additionally, in order to accommodate the competing expression of interest filed by Patrick Michael Sullivan, the Commission is allocating Channel 242C2 to Keokuk. As stated in the *Notice*, Withers' proposal was not considered to be an adjacent channel upgrade and thus was not governed by § 1.420(g) of the Commission's Rules. Channels 237A and 290C2 are 53 channels removed. In accordance with § 73.207 of the Commission's Rules, Class A and C2 allotments which are 53 channels apart require a separation of 16 kilometers to avoid causing IF interference. However, Channel 290C2 can be allocated to Keokuk without requiring the deletion of Channel 237A if the higher powered channel is restricted to an area at least 16.7 kilometers (10.4 miles) southwest. Therefore, the expression of interest filed by Patrick Michael Sullivan for Channel 290C2 at Keokuk has been accepted. However, since no interest in use of Channel 237A has been expressed, we shall not retain the channel at Keokuk. Therefore, Channel 290C2 can be allocated to Keokuk with a lesser site restriction of 9.6 kilometers (6.0 miles) west to avoid a short-spacing to Station WWCT, Channel 289B, Peoria, Illinois. Channel 242C2 can be allocated to Keokuk with a site restriction of 6.0 kilometers (3.7 miles) northwest to avoid a short-spacing to Station KRJY, Channel 242C1, St. Louis, Missouri. With this action, this proceeding is terminated.

DATES: Effective April 4, 1988. The window period for filing applications for Channel 242C2 will open on April 5, 1988, and close on May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-416.

adopted January 14, 1988, and released February 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Iowa is amended by amending the entry for Keokuk to add Channels 242C2 and 290C2 and delete Channel 237A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-3974 Filed 2-24-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-262; RM-5295; RM-5344]

Radio Broadcasting Services; Cape Vincent, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Mars Hill Broadcasting Company, Inc., allocates Channel 234A to Cape Vincent, New York, as the community's second local FM service. Channel 234A can be allocated to Cape Vincent in compliance with the Commission's minimum distance separation requirements, without a site restriction. However, the station must use a directional antenna limiting the radiation towards Station CBBB-FM, Belleville, Ontario, to 0.75 kW ERP with a height above average terrain of 100 meters, or the equivalent, on the radial towards Belleville, Canadian concurrence in the allotment of Channel 234A at Cape Vincent, as a specially negotiated short-spaced allotment has been received. With this action, this proceeding is terminated.